

The Storied Third Branch

A Rich Tradition of Honorable Service Seen Through the Eyes of Judges

NOVEMBER 2014

CENTER FOR JUDICIAL STUDIES
DUKE LAW

U.S. District Court, District of Montana Judge Paul G. Hatfield

“He Was the Same Person in Court, at Home or at the Racetrack”¹

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Judge Paul Hatfield was an extraordinary judge, a man possessed of humility and courage. He was born and raised in a “blue-collar” family, and he never forgot his roots. I remember him as a mentor, a friend, and an awfully funny storyteller who frequently moved to the next tale before he got to the punch line of the story he was telling. He was witty and comfortable in the company of Presidents and high office holders but he was not urbane. On Friday July 1, 2000, I was in his office with another colleague, listening to the Judge regale us with funny and historical tales about Montana, its characters, and history. He was a delight to listen to and he had a never ending wealth of stories that stemmed from his remarkable knowledge of Montana and U.S. history. Shortly before noon our confab ended because, as was his daily habit, Judge Hatfield was headed to noon mass at St. Ann’s Cathedral.

I remember talking with my colleague as we left, and we agreed that what the two of us should do was to get a tape recorder and record our “bull sessions” with the judge, one of us noting that “he won’t be here forever.” Sadly, two days later on Sunday July 3, 2000, Judge Hatfield died of a heart attack at the age of 72. With

¹ Richard Ecke, *Hatfield Remembered as Humble, Charismatic*, Great Falls Trib. (July 9, 2000) [hereinafter *Hatfield Remembered*].

his death, for our court and the public, a great deal of institutional and Montana history was lost.

In assessing the significance of any life, and in particular the life of a judge, there is inevitably the question of who was that person and what was it about him or her that made a good, or not so good, judge. Paul Hatfield exemplified qualities that made him a good judge. He had courage, he had smarts, he had humility, he was kind, and he was blessed with an abundance of common sense coupled with a wonderful sense of humor. In 1979, Judge Edward J. Devitt published an article in the ABA Journal called “The Ten Commandments For New Federal Judges.”² When reflecting on Judge Hatfield’s life and career, each of those exhortations comes readily to mind. But first, his life needs a bit of context to really appreciate the significance of his contributions to Montana and the law as well as what kind of man and judge he was.

Judge Hatfield was born and raised in Great Falls, Montana, on the wind swept high plains when the town was dominated by agriculture, railroads, and smelting. He joined the U.S. Army in 1951 and served in combat in Korea. When he left the Army he attended the University of Montana and subsequently graduated from the law school and was admitted to the Montana bar. “He described himself as an avid reader and dreamer who eventually pursued law to prove that the son of blue-collar workers could enter the prestigious field.”³ His public service began a short time later when he worked as a Deputy County Attorney in Cascade County, a job that gave him perspective on the power of government and the importance of liberty. In 1960, he was elected as a state district court judge. He served in that role, presiding over many civil and criminal jury trials, handling the difficult issues of divorce and custody, and where he built a reputation as a lawyer’s judge who respected the advocacy system. In 1967, he was appointed as one of three judges named to Montana’s Sentence Review Division of the State Supreme Court.⁴ Once again the Judge’s life’s experience was broadened and his perspective honed as he and his fellow judges dealt with the difficult questions of measuring the justness of

² Edward J. Devitt, *The Ten Commandments for New Federal Judges*, 65 ABA J. 574 (Apr. 1979).

³ *Hatfield Remembered*, *supra* n. 1.

⁴ *Id.*

sentences imposed by other Montana judges. It was an occasion for him to think about justice and the role of judges in the criminal justice system, lessons he kept with him the balance of his life. “He was a generation ahead of most public officials in looking for programs to help cut crime through prevention efforts.”⁵

Judge Hatfield’s life and Montana history turned again in 1976 when he was elected Chief Justice of the Montana Supreme Court. Soon after, history called again when one of Montana’s Senators, Lee Metcalf, died unexpectedly. Governor Thomas Judge made a surprise appointment to replace Senator Metcalf when he chose Chief Justice Hatfield to serve the remainder of Metcalf’s Senate term. When the appointment was announced and now Senator Hatfield was asked about it, he said “he felt ‘twitterpated’ at getting to work with famous senators.”⁶ Senator Hatfield was not long in the United States Senate before he was accepted in that august body as a hard worker who put his knowledge of history, political science, and the law to work. As he said in a later interview “I don’t want to brag, but I fit in the Senate like a stone in mud.”⁷

One of the first issues Senator Hatfield was to confront was President Jimmy Carter’s Panama Canal Treaty and the resulting complicated, controversial, and excruciating vote. Senator Hatfield spent night and day “for weeks honing up on the treaties, under hot media scrutiny as one of the last senators to decide.”⁸ His vote ended up being decisive in the Senate consenting to the resulting treaty. At the time he voted on the canal treaty he was in a primary political race for his senate seat against then Congressman Max Baucus. Voting in favor of the Panama Canal Treaty was highly unpopular in Montana. It wasn’t very popular in the country either. But Paul Hatfield voted in favor of the treaty and against his own interest. He had studied the issue and knew it intimately. He was fully aware of the political fact that if he voted for the treaty it would be political suicide. But, being the man of impeccable integrity and courage that he was, he did what he had determined was right for the country. He did his homework and voted for the

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

treaty. He knew the personal and political consequences of the vote but he did it anyway, a profile of courage befitting one with a lifetime appointment but a quality almost extinct as a characteristic of current politics. “Mike Mansfield, the former Senate majority leader from Montana, who was U.S. ambassador to Japan in 1978, congratulated Hatfield for ‘an act of statesmanship and courage on the part of a new senator under very heavy pressure.’”⁹

The political handwriting on the wall proved to be accurate when Senator Hatfield was defeated in the primary election by Senator Baucus, who now serves as the Ambassador to China. But, even in defeat he was gracious and once again sacrificed his personal needs and office for the good of the country. After the general election Hatfield stepped down early so that newly elected Senator Baucus could be seated before his senate classmates and thus gain seniority in the incoming class of Senators, an act that subsequently led to Senator Baucus chairing the Senate Finance Committee. That selfless act left Paul Hatfield out of work and unemployed. He humbly asked his former colleagues on the Montana Supreme Court if he might return to some public service to assist with the work of the court. They hired him as a “law clerk,” a position he held until President Carter reached out to appoint him to the federal district court in 1979. He later served as the Chief Judge of the federal court in Montana and was an innovator in adapting to the new changes in the Federal Rules of Civil Procedure and in actively managing and trying cases. He took senior status in 1995, and I was fortunate enough to be named as his replacement. In 1999, he was honored as a distinguished alumnus of the University of Montana School of Law.

All of this information provides context for Judge Devitt’s “10 Commandments” as they relate to Judge Paul Hatfield. The stories about Judge Hatfield are many but to begin, as the first commandment for new judges says, and which he followed to a tee, “Be Kind.” Sitting in Great Falls Judge Hatfield had the responsibility for several of Montana’s seven Indian Reservations. That meant not only trying and sentencing American Indian defendants, but it also meant working with them while they served a term of supervised release. There was one defendant who was perpetually late for his court appearances and he always had an excuse, so much so

⁹ *U.S. District Judge Hatfield Dies*, Great Falls Trib. (July 7, 2000).

that the judge got to know him and his excuses quite well. On one particular day the man showed up late once again and confessed to Judge Hatfield that he was late because his car had mechanical problems. The judge asked him what the problem was and after the fellow told him his plight Judge Hatfield asked him what he needed to fix it. The defendant explained he needed a bit over \$150.00 but that he didn't have the money right then to solve his problem. Judge Hatfield reached inside his robe, drew out his check book and wrote the man a check for the amount he needed and then told him "don't be late again." There are many stories where Judge Hatfield was kind to defendants, to lawyers, and to jurors, because he had an innate sense of the importance of each in the administration of justice.

The second commandment to new judges is "be patient." "Hatfield maintained an even keel and a hope for humanity." "The robe, the power, never went to his head He realized he had all this power and didn't abuse it."¹⁰ Judge Hatfield was very patient, but there were times like all of us on the bench when he felt it necessary to intercede with a little prod to keep things moving. In one particular case a well known California defense attorney was on trial for contempt. The star witness for the defense was a famous Wyoming lawyer, well known for his books, his lectures, and his television appearances. As the star witness was being examined his answers got longer and longer until finally Judge Hatfield injected himself for the benefit of the jury and in the interest of progress. He told the witness "if you don't shorten your answers you are going to be late for Larry King live!" A humorous exchange between the judge and the witness followed but the case then moved more quickly. On another occasion at a trial near Thanksgiving Judge Hatfield regaled the jurors with his stories and his humor to break the tension in the court. Afterward the jurors sent him a bouquet of flowers they liked him so much.¹¹

The new judge must also "be dignified." That commandment is coupled with another "do not take yourself too seriously." Paul Hatfield was a dignified man, but dignified with a great sense of self-deprecating humor. When I first went on the bench, and having no prior experience as a judge, I often visited with Judge

¹⁰ *Hatfield Remembered*, *supra* n. 1.

¹¹ *Id.*

Hatfield about the task of judging. He was always serious in his advice but inevitably he would lighten the seriousness with some anecdote or joke. The one I still remember is when he told me what is needed to be an effective judge. He said “Molloy, to be an effective judge you need two things. First you have to have grey hair to look distinguished. Secondly, you need hemorrhoids so you will look concerned.” While dignified, Judge Hatfield never took himself too seriously because he didn’t consider himself anything other than a blue-collar guy doing his job.

The fifth commandment is that a lazy judge is a poor judge. Judge Hatfield was far from lazy. He was active in managing an extensive and complicated docket that concerned everything from criminal law to complex environmental challenges. One environmental case lasted for years and involved his judgment and common sense at every stage of the case. He also volunteered in the Ninth Circuit, trying cases other judges could not try because of packed calendars. He was a leader in pushing for fairness in the rules of civil procedure and in the local rules of procedure and he was one of the first to volunteer his court to try new ideas. He was busy but never complained and always got his work done in a timely way.

While the sixth commandment is to “not fear reversal” the thought was never a concern for Judge Hatfield. He called the cases as he saw them and was unconcerned about reversal in anything he did except to emit the lament of the trial judge on occasion when the reversal comes, “Well, they weren’t looking at the same case I was.”

The seventh commandment is an admonition to the judge to keep in mind that “there are no unimportant cases.” Judge Hatfield recognized this every time he took the bench, or any time a case was filed. His years of experience on the state bench and his concern for juveniles and for domestic relations cases taught him there was no unimportant case. He was a strong advocate for the environment and knew the historical and geological significance of the east front of the Rocky Mountain range. One of his important decisions was to require the Forest Service to conduct full-fledged environmental impact statements before it could sell oil and gas leases on or near the east front. The entire spectrum of cases did not fall

outside of Judge Hatfield's perspective of what kind of case was important; they all were important and they all got his attention.

A judge should be prompt. Judge Hatfield managed his docket so that the cases he was handed were dealt with in a thorough and prompt manner, recognizing that some cases required more time and thought than others. Before everything was computerized he developed, along with his staff, a means of tracking cases and the time they were under consideration. He was attentive to the needs of jurors and lawyers and did not waste the time of either by keeping them waiting or by scheduling other matters that conflicted with the valuable time of the participants involved in the process.

The ninth commandment is "common sense." You would be hard pressed to find a judge with more common sense than Paul Hatfield. His life's experiences in the military, and in the law as a lawyer and judge, coupled with his blue-collar upbringing gave him a wonderful treasure chest of common sense. That common sense carried over into every undertaking he did as a judge and a person except one. Here I am not quite serious. The Achilles heel of Judge Hatfield's common sense was his passion for horses. Race horses in particular, as he was the owner and feeder of race horses with his son. Anyone with common sense would know that you should never own anything that eats at night. But, Paul Hatfield loved horses and he loved his race horses. The Sunday that he died he had spent at the track watching various nags run and I am sure having a beer or two with the "regular" people that live and work with horses. It was a fitting last day for a great judge who was blessed with more than enough common sense to accommodate his one shortcoming.

Finally, the tenth commandment for the new judge is "pray for divine guidance." I am sure Judge Devitt came up with that one with tongue in cheek, but maybe not. As Judge Devitt observed, "If you believe in a supreme being, you should pray to him for guidance, judges need that help more than anybody else."¹² I don't know if Judge Hatfield prayed for guidance, but if he did, his prayers must have been answered because he served the people of Montana and the United States with

¹² Devitt, *supra* n. 2, at 574.

courage and humility, never taking himself too seriously and always acting in the interest of the country, the state, and of justice. And, for Judge Hatfield, morning court session ended at 11:45 so he could race to St. Ann's Cathedral for the noon mass.

His humility and his courage are an inspiration as well as an aspiration for any judge, state or federal; characteristics that I find myself frequently in need of affirmance. He was a good man and a great judge.